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SUPREME COURT, U.S.

No. 98-254

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

PRINCESS CRUISES, INCORPORATED,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner, Princess Cruises, Inc. ("Princess"), has been stripped of over $4.3 million of its jury verdict, because one of its ships happened to sail into a Virginia port for repairs rather than one in New York, Texas, or California. In fact, had the UCC, the federal common law of the Second, Fifth or Ninth Circuits, been followed by the Fourth Circuit, Princess would have already recovered its $4.6 million judgment. Instead, the judgment has been reduced to $231,925 by the Fourth Circuit, because that court was "unpersuaded" by the other circuits' rulings, and it chose to apply the common law of Virginia to a federal maritime dispute. That decision and the dangerous precedent it sets need to be reviewed.

Princess has asked this Court to issue a Writ of Certiorari to review the judgment of the Fourth Circuit which prohibits admiralty courts from looking to the UCC to fashion maritime law when interpreting non-sales contracts. This ruling, which orders the lower courts to look exclusively to state common law, creates an irreconcilable conflict among the circuits which will introduce chaos into maritime law. It also departs drastically from this Court's precedent of shunning state law when it interferes with the harmony and equity of admiralty law.

That critical Fourth Circuit holding is as follows:

> We . . . hold that when the predominant purpose of a maritime or land-based contract

> is the rendering of services rather than the furnishing of goods, the U.C.C. is inapplicable, and courts must draw on common-law doctrines when interpreting the contract.

(143 F.3d at 830, App A-2-3).

Respondent, General Electric Company ("GE"), has filed a Brief in Opposition ("Opp."), which bases its arguments on a mistaken reading of the Fourth Circuit's holding. According to GE:

> The Fourth Circuit correctly held that admiralty courts should look to the RESTATEMENT, not the UCC, for the law governing the formation of a services contract.

(Opp. 8). This characterization of the appellate court's holding is inaccurate: (1) the Fourth Circuit did not hold that admiralty courts "should" look to anything: it ordered the lower courts to apply state common law and prohibited them from using the UCC; (2) the RESTATEMENT was not part of the Fourth Circuit's holding, and courts were not told to look to it; as referenced above, they were ordered to look to common law; (3) the holding was not limited to the "formation" of a services contract: all issues of contract interpretation were included within the Fourth Circuit's broad ruling.

GE makes the same error in its wistful argument that there is "really" no split among the circuits. Thus, according to GE:

> Princess . . . attempt[s] to persuade this Court that there is a "major conflict" between the Fourth Circuit's opinion and other circuit court decisions. Pet. 8-10. The cases Princess cited, however, do not directly address the issue in this case: whether Section 2-207 of the U.C.C. or the RESTATEMENT (SECOND) OF CONTRACTS ("RESTATEMENT") should be applied when assessing the formation of a maritime services contract.

(Opp. 4). However, as referenced above, the Fourth Circuit did not decide that the "RESTATEMENT" "should" be applied when assessing the "formation" of a maritime services contract. Rather, it held that the "common law" "must" be applied when "interpreting" a maritime services contract. It also held specifically that the UCC cannot be applied.

GE apparently believes that there is less likelihood of federal maritime law splintering into 50 inconsistent variations under the dubious guidance of the RESTATEMENT (SECOND) OF CONTRACTS than there would be under the states' common law. This belief is misplaced. To begin with, the Fourth Circuit's holding does not elevate the RESTATEMENT to law. That secondary authority was only cited by the appellate court in dicta to prop

up its mandate to admiralty courts to use state common law. Princess Cruises, Inc. v. General Electric, 143 F.3d 828, 834 (4th Cir. 1998) (App. A, 14-15).

Moreover, even if the Fourth Circuit did rule that the RESTATEMENT should be deemed the maritime law for service contracts, there would still be an irreconcilable split among the maritime circuits. The Fourth Circuit has prohibited its admiralty courts from looking to UCC principles to fashion maritime law in non-sales transactions. By contrast, three other circuits have consistently looked to and utilized such UCC principles in maritime non-sales transactions. The Second and Ninth Circuits have unequivocally declared the UCC to be a part of the federal common law of admiralty and applied it to non-sales cases. Asphalt International, Inc. v. Enterprise Shipping Corp., 667 F.2d 261, 265 (2d Cir. 1981); Interpool Ltd. v. Char Yigh Marine (Panama) S.A., 890 F.2d 1453, 1459 (9th Cir. 1989). And the Fifth Circuit has expressly permitted its admiralty courts to draw on the commercial expertise of the UCC: "In construing a contract for services, [admiralty] courts are free to reason by analogy to [the UCC]." Employers of Wausau v. Suwannee River Spa Lines, Inc., 866 F.2d 752, 765 n.25 (5th Cir. 1989).

Obviously, as in this instant case, the results of judicial interpretation of contracts can differ radically depending on whether the UCC or the common law is applied. Therefore, as matters now stand, maritime service contracts will be construed and interpreted inconsistently

from circuit to circuit and even from state to state. It hardly needs to be said that this conflict is destructive to a uniform and harmonious maritime industry.

In summary, there is a vital national policy at stake in this case: Whether admiralty courts may have access to the uniformity, expertise, and fairness of the UCC in construing many thousands of service contracts per year. This policy decision will affect the shipping industry in such diverse areas as ship repairs, drydocking, charters, piloting, and towing, among many other non-sales transactions. The Second, Fifth, and Ninth Circuits have embraced the UCC for those activities. The Fourth Circuit has spurned it.

Petitioner asks this Court to review this intolerable situation and to enunciate a cohesive national maritime law.

Respectfully submitted,

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